

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, TYLER MAGILL, APRIL
MUNIZ, HANNAH PEARCE, MARCUS
MARTIN, NATALIE ROMERO, CHELSEA
ALVARADO, and JOHN DOE

Plaintiffs,

v.

Civil Action No.: 3:17CV00072

JASON KESSLER, RICHARD SPENCER,
CHRISTOPHER CANTWELL, JAMES ALEX
FIELDS, JR., VANGUARD AMERICA,
ANDREW ANGLIN, MOONBASE
HOLDINGS, LLC, ROBERT “AZZMADOR”
RAY, NATHAN DAMIGO, ELLIOTT
KLINE a/k/a ELI MOSELEY, IDENTITY
EVROPA, MATTHEW HEIMBACH, MATTHEW
PARROTT a/k/a DAVID MATTHEW PARROTT,
TRADITIONALIST WORKER PARTY,
MICHAEL HILL, MICHAEL TUBBS, LEAGUE
OF THE SOUTH, JEFF SCHOEP, NATIONAL
SOCIALIST MOVEMENT, NATIONALIST
FRONT, AUGUSTUS SOL INVICTUS,
FRATERNAL ORDER OF THE ALT-KNIGHTS,
MICHAEL “ENOC” PEINOVICH, LOYAL
WHITE KNIGHTS OF THE KU KLUX KLAN,
and EAST COAST KNIGHTS OF THE KU KLUX
KLAN a/k/a EAST COAST KNIGHTS OF THE
TRUE INVISIBLE EMPIRE,

Defendants.

**BRIEF IN OPPOSITION TO PLAINTIFFS’ MOTION FOR ATTORNEYS’ FEES AND
COSTS – ECF 1522**

COMES NOW JAMES ALEX FIELDS, by and through Counsel, and for his brief in
opposition to Plaintiffs’ motion for attorneys’ fees and costs states as follows:

As this Court is aware, Fields was arrested on August 12, 2017, and has been in state or federal custody since that date. Fields has been sentenced to multiple life sentences without the possibility of parole pursuant to a federal plea agreement and has been sentenced to life in prison plus many years following a jury trial in Virginia state court. To say Fields has no ability to pay fees or costs exceeding \$1 million dollars is an understatement.

Plaintiffs seek attorneys' fees and costs pursuant to Virginia Code §8.01-42.1 and any interrelated claims. However, Plaintiffs' make no attempt to delineate what costs and fees were incurred pursuant to which claim or claims. This is a fatal flaw.

In *Johnson v. Hugo's Skateway*, the Fourth Circuit dealt with this issue. *Johnson v. Hugo's Skateway*, 949 F. 2d 1338 (4th Cir. 1991). The Fourth Circuit held that the District Court did not err in reducing attorney's fees it found "manifestly excessive" particularly where the prevailing party did not make a distinction as to what fees and costs related to which claims or claims because Plaintiff did not prevail on all counts or claims. *Hugo's Skateway* 949 F. 2d at 1352. In that case, as in the case at bar, a 1983 claim was litigated. In that case, the 1983 claims did succeed as to a co-Defendant but not as to Hugo's Skateway. In the present case, the 1983 claim did not prevail as to any Defendant.

And, in Virginia, a prevailing party is required to establish "to a reasonable degree of specificity" which costs, fees and expenses are associated with successful claims. *West Square, LLC v. Commun. Techs.*, 274 Va. 425, 431 (2007).

The Court must make assess a defendant's ability to pay a fee award in order to grant a motion as to fees or non-mandatory costs. *Clark v. Stanley Furniture Co., LLC* 2021 U.S. Dist. LEXIS 198260 *25. (W.D. Va. 2021).

Plaintiffs' motion fails as a matter of law due to all the reasons stated above. Plaintiffs do not delineate or apportion the fees, costs or expenses as required. The thrust of Plaintiffs litigation, and thus costs and fees, were the federal hate crime claims in Counts I and II on which they did not prevail. Much of the fees were wholly unnecessary on their face – such as rush transcript requests on each and every deponent, even those taken years prior to trial, and daily and streaming

transcripts. Finally, Fields manifestly has no ability to pay any award, much less the excessive award sought by Plaintiffs.

WHEREFORE, for the foregoing reasons, Defendant Fields, by counsel, prays that this Court enter an Order denying Plaintiffs' Motion for Attorneys' Fees and Costs as to Fields.

Respectfully submitted,

JAMES ALEX FIELDS, JR.

By Counsel

/S/
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CERTIFICATE OF SERVICE

I hereby certify that on 13th day of April, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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I further certify that on April 13, 2022, I also served the following non-ECF participants, via U.S. mail, First class and postage prepaid as follows:

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